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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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10/612,770

07/01/2003

James E. Brewer

A03P1047

4998

36802 7590 04/30/2008

PACESETTER, INC.
15900 VALLEY VIEW COURT
SYLMAR, CA 91392-9221

EXAMINER

GEDEON, BRIAN T

ART UNIT

PAPER NUMBER

3766

MAIL DATE

DELIVERY MODE

04/30/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--------------------------------------|--------------------------------------|--|
| Office Action Summary | Application No. 10/612,770 | Applicant(s) BREWER ET AL. | |
| | Examiner Brian T. Gedeon | Art Unit 3766 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 January 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. This action is in response to the amendment after non-final filed 18 January 2008. Claims 1-22 are pending.

Oath/Declaration

2. The objection made to the oath/declaration in the previous Office action has been withdrawn in view of the newly filed oath.

Claim Rejections - 35 USC § 102

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 1, 2, 4, 6, 7, 8, 15-19, and 22 rejected under 35 U.S.C. 102(b) as being anticipated by Hill et al. (US Patent no. 6,195,584).

The Examiner maintains the 35 U.S.C. 102(b) rejection made in the previous non-final Office action. Text of those rejections can be found in the non-final Office action dated 5 November 2007.

Claim Rejections - 35 USC § 103

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 3, 5, 20, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hill et al. (US Patent no. 6,195,584).

The Examiner maintains the 35 U.S.C. 103(a) rejection made in the previous non-final Office action. Text of those rejections can be found in the non-final Office action dated 5 November 2007.

7. Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hill et al. (US Patent no. 6,195,584) in view of Digby (US Patent no. 4,173,230).

The Examiner maintains the 35 U.S.C. 103(a) rejection made in the previous non-final Office action. Text of those rejections can be found in the non-final Office action dated 5 November 2007.

8. Claims 10-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hill et al. (US Patent no. 6,195,584) in view of Burnes et al. (US Publication no. 2003/0204212).

The Examiner maintains the 35 U.S.C. 103(a) rejection made in the previous non-final Office action. Text of those rejections can be found in the non-final Office action dated 5 November 2007.

Response to Arguments

9. Applicant's arguments filed concurrent with the amendment have been fully considered but they are not persuasive.

In response to Applicant's argument that the Hill et al. reference does not detect displacement of the electrode, but rather the dislodgement of the electrode, the

Examiner respectfully disagrees. The definition of “dislodgment” as defined by *The American Heritage Dictionary* is “To remove or force out from a position or dwelling previously occupied”; the same reference defines “displace” as “To move or shift from the usual place or position.” Essentially, to displace an object of matter, that object of matter must be dislodged from its original position; a force must necessarily be applied to overcome the inertia of an object in order for it to be displaced, and would also therefore result in dislodgment of the object. In view of these definitions, the Examiner considers that the “dislodgment” of the medical lead of Hill et al. reads on and anticipates the “displacement” of the lead in the Applicant’s invention.

Further, in response to Applicant's argument that “displacement” refers to the “distance the electrode in one chamber moves in response to an excitation in another chamber,” the Examiner recognizes this as an accepted definition of the term. However, the Applicant has not claimed the use of “displacement” in this regard, and thus is open to interpretation of any acceptable definition of the term, such as those presented above. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian T. Gedeon whose telephone number is (571) 272-3447. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl H. Layno can be reached on (571) 272-4949. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3766

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Carl H. Layno/
Supervisory Patent Examiner, Art Unit 3766

Carl H. Layno
Examiner
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